

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

MICHAEL D. MCCAIN, SR.,

Plaintiff,

Case No. 2:15-cv-1262

vs.

CHAROLETTE JENKINS, *et al.*,

Defendants.

District Judge Michael H. Watson
Magistrate Judge Michael J. Newman

ORDER AND ENTRY: (1) VACATING THE APRIL 18, 2019 REPORT AND RECOMMENDATION (DOC. 138); (2) ORDERING PLAINTIFF TO FILE OPPOSITIONS TO DEFENDANTS' DISPOSITIVE MOTIONS ON OR BEFORE JUNE 3, 2019; (3) DIRECTING THE CLERK TO MAIL BY CERTIFIED MAIL THE DOCKET SHEET IN THIS CASE AND ALL FILINGS IN THIS CASE SINCE THE BEGINNING OF 2019; AND (3) DENYING IN ALL OTHER RESPECTS PLAINTIFF'S MOTION FOR STAY OR EXTENSION OF TIME (DOC. 139)

This civil case is before the Court on *pro se* Plaintiff's motion for a stay of proceedings or, alternatively, an extension of time to respond to the Court's April 18, 2019 Report and Recommendation in which the undersigned recommends that this case be dismissed as a result of Plaintiff's failure to prosecute. Doc. 139. In that Report and Recommendation, the undersigned noted Plaintiff's failure to file a memorandum in opposition to Defendants' motion for judgment on the pleadings (doc. 95), a memorandum in opposition to Defendants' motion for summary judgment (doc. 110), and responses to the undersigned's Show Cause Orders (docs. 128, 137).

In his motion, Plaintiff asserts that he never received copies of the Court's Show Cause Orders and that he sent a 112-page opposition and cross-motion for summary judgment for filing in December 2018. *Id.* While Defendants received a copy of Plaintiff's 112-page motion and opposition (doc. 130), as previously noted by the undersigned, the Court did not. Doc. 137. Instead, the Court received only the following documents from Plaintiff: (1) numerous affidavits

executed by Plaintiff; (2) other exhibits, such as written grievances; and (3) eight select pages (pages 51, 62-67, and 112) of the 112-page motion and opposition memorandum. The undersigned struck Plaintiff's filing because no complete memorandum was filed and because, to the extent Plaintiff intended to file a 112-page motion and opposition, it would violate the 20-page limitation set forth by the Court's Local Rules. Doc. 137.

Having not received a complete copy of Plaintiff's motion or opposition, the undersigned issued two Show Cause Orders (docs. 128, 137) directing Plaintiff to either (1) show cause as to why the case should not be dismissed for failure to prosecute; or (2) file appropriate opposition memoranda. Again, Plaintiff asserts that he did not receive copies of either Show Cause Order nor a number of other documents filed with the Court. Doc. 139. Having received no response or memoranda from Plaintiff, the undersigned issued the aforementioned Report and Recommendation, the only document Plaintiff has allegedly received from the Court since December 2018.¹ Doc. 138.

Giving Plaintiff the benefit of the doubt, and noting the Court's preference for resolving cases on their merits, the undersigned **VACATES** the Report and Recommendation dated April 18, 2019 (doc. 138). Plaintiff is **ORDERED** to file memoranda in opposition to Defendants' motion for judgment on the pleadings (doc. 95) and motion for summary judgment (doc. 110) on or before **June 3, 2019**. In combined total, Plaintiff's opposition memoranda, exclusive of attachments and exhibits) shall not exceed 50 pages. The undersigned **NOTIFIES** Plaintiff that his failure to file opposition to Defendants' motions on or before **June 3, 2019** will result in the dismissal of this case for failure to prosecute.

¹ The docket reflects that each of the Court's Orders and R&Rs were mailed to Plaintiff by the Clerk of Courts.

The Clerk of Court is **ORDERED** to mail to Plaintiff by **certified mail** at his address of record (1) a copy of the docket sheet in this case, (2) a copy of this Order, and (3) copies of documents filed in this case since the beginning of 2019 (docs. 127-139). To the extent Plaintiff's motion for stay or an extension of time requests relief not provided for in this Order, such motion is **DENIED**.

IT IS SO ORDERED.

Date: May 1, 2019

s/ Michael J. Newman
Michael J. Newman
United States Magistrate Judge